

**NORTH CAROLINA COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL
DISABILITIES AND SUBSTANCE ABUSE SERVICES**

Rules Committee Minutes

**DoubleTree Hotel
Raleigh, NC**

Thursday, January 23, 2014

Commission Members Attending:

Amie T. Brendle, Anna R. Cunningham, Roger Dillard, James Finch, Melissa Gott, Michael R. Grannis, Michael F. Maybee, Kevin Oliver, Pamela Poteat, Brian B. Sheitman, Marian Spencer, Peggy Terhune, Don Trobaugh, David Turpin, Carol C. Vale, John Emerson, John Owen, Greg Olley, Elizabeth Ramos

Division Staff:

Marta T. Hester, Andrea Borden, Steven E. Hairston, Denise Baker, Glenda Stokes

Other Attendees:

Susan Saik Peebles, Jim Martin

Call to Order:

Kevin Oliver, Chair, NC Commission for Mental Health, Developmental Disabilities and Substance Abuse Services (Commission) Rules Committee called the meeting to order at approximately 9:40a.m. with a moment of reflection. Mr. Oliver then issued the ethics statement and conflict of interest reminder.

Approval of Minutes:

Upon motion, second, and unanimous vote, the Rules Committee approved the minutes of the October 24, 2013 minutes with the following amendments: add Marian Spencer's name to the list of attendees, and delete licensed psychologist on page six.

New Business:

Proposed Amendment of Rule 10A NCAC 27C .0201 – State Facility Environment

Dr. Susan Saik Peeble, Medical Director, NC Division of State Operated Healthcare Facilities (DSOHF), presented the update on the proposed amendment of Rule 10A NCAC 27C .0201 –*State Facility Environment*. The proposed amendment to this rule is to remove the provision requiring adequate areas that are accessible to patients/residents who wish to smoke tobacco at the state operated facilities. The Commission has rulemaking authority for the subject matter of the proposed amendment. There was only one comment received during the publication of this rule; that comment was in the form of a letter and has been provided to the members for review. This rule is before the Rules Committee for approval to forward to the full Commission for final review.

The following questions were posed by the Rules Committee members in reference to the proposed amendment of Rule 10A NCAC 27C .0201 – State Facility Environment:

- Amie Brendle asked if the rule involved smoking on campus or if it included all tobacco use. Dr. Peebles responded that the amendment removes the requirement to set aside space for smoking. This rule would also allow staff to move forward with setting policies on tobacco use on the grounds and in state facilities.

- Michael F. Maybee asked if they would be addressing electronic cigarettes due to the recent popularity thereof. Dr. Peebles responded that there is a lot of activity around the subject of electronic cigarettes and there have been discussions about those within the Department of Health and Human Services. Dr. Peebles stated that the prohibition of electronic cigarettes would be put in the policies regarding smoking on campus.
- John Owen asked if this rule would also include staff. Dr. Peebles responded that it would also include the staff.

Upon motion, second, and unanimous vote, the Rules Committee approved the amendment and submission of Rule 10A NCAC 27C .0201 – State Facility Environment to the Commission for final review.

Proposed Amendment of Rule 10A NCAC 27G .0504 – Local Management Entity Client Rights Committee and Provider Client Rights Committee

W. Denise Baker, Team Leader, Division Affairs Team, and Glenda Stokes, Acting Chief, Advocacy and Customer Service Section, DMH/DD/SAS, presented the proposed amendment of Rule 10A NCAC 27G .0504 – Local Management Entity Client Rights Committee and Provider Client Rights Committee. The amended language is necessary to update the rule to conform to current developments in Mental Health Reform. The Commission has authority to amend this rule and it is before the committee for an update on the requests for technical changes as well as the objection of the rule by the Rules Review Commission (RRC). The technical changes requested by the RRC have been made. However, the RRC objected to the proposed amendment based upon a lack of statutory authority. Specifically, G.S. 122C-64 requires that the client rights committees be comprised of a representative from each of the counties in the applicable LME catchment area. The RRC opined that the Commission is without authority to require less than 100% county representation given that requirement.

The following questions were posed by the Rules Committee members in reference to the proposed amendments of Rule 10A NCAC 27G .0504 – Local Management Entity Client Rights Committee and Provider Client Rights Committee:

- Peggy Terhune stated that she would be willing to talk to Representative Dollar regarding changing the statute given the current configuration of LMEs in the State.
- James Finch stated that the rule could be changed to say that every county needs to represent the committee can then say they are going to rotate participation to make it functional. Ms. Baker responded that the rule, as proposed for amendment, would allow the LMEs to rotate membership on the committees allowing for each county to be represented over time. However, the RRC questioned the use of this membership pattern given the requirements of the statute.
- Michael F. Maybee stated that on March 7th there will be a presentation to the legislature about the future of Medicaid with a look at the possibility of turning away from the MCO model. He stated the most prudent thing would be to let the Rule die and then start process over again.
- Marian Spencer stated that if they stick with the 35 counties, then at least the other changes can go forward.

Upon motion, second and unanimous vote, the Rules Committee approved the change in line 67 of Rule 10A NCAC 27G .0504 to read “Committee membership including assurance of representation as dictated by statute.”

Upon motion, second and unanimous vote, the Rule Committee adopted the technical changes recommended by the RRC.

N.C.G.S. §150B-21.3A – Periodic Review and Expiration of Existing Rules

Ms. Baker gave the presentation on N.C.G. S. §150B-21.3A – *Periodic Review and Expiration of Existing Rules*. Ms. Baker stated that this Section was added to the *Administrative Procedure Act* to require that rules that had been established by agencies are periodically reviewed to determine whether or not they are necessary with substantive public interest, necessary without substantive public interest, or unnecessary. Ms. Baker stated that the staff is compiling a Rule book consisting of the rules of the North Carolina Administrative Code for which the Commission has authority; it will include rules for which the Secretary has authority as well. Ms. Baker stated that the Committee will need to review each rule, written under its authority, and decide how the rule should be categorized. Ms. Baker stated that each rulemaking entity was asked to generate a schedule that would then be submitted to the RRC for consideration and possible adoption. While this allowed rulemaking entities to provide input into the rules review schedule, the final schedule will be adopted by the RRC. Ms. Baker stated the Commission will begin its review with the rules housed in Subchapters 26A and 26B of the Code. Members have been provided with copies of those rules and encouraged to begin an independent review such that recommendations can be made at the April Rules Committee meeting. The Commission could then begin its initial review of the rules at the May 2014 meeting; it may be able to adopt its Initial Determination Report of those rules at that time. Following the initial determination by the Commission, the Initial Determination Report would then be submitted for a public comment period. Similar to the rulemaking process, the Commission will then review, and respond, to all substantive comments received during publication.

The following questions were received by Ms. Baker from the Rules Committee regarding N.C.G.S. §150B-21.3A – *Periodic Review and Expiration of Existing Rules*:

- John Owen asked is someone was looking at the rules for consistency with federal law. Ms. Baker responded that the question of whether the rule is required by federal law will need to be addressed for each rule. Rules required by federal law will not automatically expire pursuant to this process.
- James Finch asked what the subject matter of Subchapters 26A and 26B are. Ms. Baker responded that 26A deals strictly with rules of procedure and 26B deals primarily with confidentiality rules.
- Ms. Baker stated that a decision needed to be made first regarding how to proceed. Ms. Baker stated that at the latest they should begin the review process in April 2014.

Public Comment Period

There were no public comments.

There being no further business, the meeting adjourned at 11:40 a.m.